

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DARREN TERRELL,)
)
Petitioner,)
)
-vs-) Case No. CIV-19-908-F
)
JEROLD BRAGGS,)
)
Respondent.)

ORDER

On July 16, 2020, United States Magistrate Judge Shon T. Erwin issued a Report and Recommendation (doc. no. 25), concluding that petitioner's habeas petition pursuant to 28 U.S.C. § 2254 is a "mixed petition" containing both exhausted and unexhausted claims and recommending that it be dismissed without prejudice unless, within 21 days of any order by the court adopting the Report and Recommendation, petitioner chooses to file an amended petition asserting only the exhausted claim. Magistrate Judge Erwin advised the parties of their right to file an objection to the Report and Recommendation by August 3, 2020 and that failure to make a timely objection to the Report and Recommendation waives the right to appellate review of both factual and legal issues therein contained.

The court is in receipt of petitioner's "Waiver of Objection; Notice to Report and Recommendation." Doc. no. 26. Petitioner represents that he waives his objection to the Report and Recommendation and gives notice that if the court adopts the Report and Recommendation, petitioner will file an amended petition within 21 days asserting only the claim he exhausted on direct appeal.

In light of petitioner's waiver and respondent's failure to file an objection to the Report and Recommendation within the time specified by Magistrate Judge Erwin, the court adopts the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Shon T. Erwin on July 16, 2020 (doc. no. 25) is **ADOPTED**.

Petitioner is **DIRECTED** to file, within 21 days of the date of this order, an Amended Petition asserting only the claim he exhausted on direct appeal. Failure of petitioner to file an Amended Petition as directed by the court shall result in the dismissal without prejudice of petitioner's § 2254 habeas petition and action.

Respondent shall have 21 days from the date petitioner files the Amended Petition to file a response. Petitioner may file any reply to the response within 21 days after the response is filed.

IT IS SO ORDERED this 10th day of August, 2020.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE